

REMARKS

This communication is a full and timely response to an Office Action (Restriction) dated July 17, 2009. Claims 1-26 remain pending. By this communication, claims 3-9 and 11 are amended.

In the Restriction, the PTO alleges that restriction to one of the following inventions is required under 35 U.S.C. §121:

- I. Claims 1-9, 14, 15, 19-23, and 25, drawn to a data sending apparatus, method, program, and medium;
- II. Claims 10, 11, 16, 24, and 26, drawn to a data receiving apparatus, method, program, and medium; and
- III. Claims 12, 13, 17, and 18, drawn to a system and method for transmission between a sending and receiving apparatus.

Based on the amendment provided herewith, claims 3-9 and 11 are now classifiable under Group III. Accordingly, Applicant hereby provisionally elects Group III, claims 3-9, 11-13, 17, and 18 for prosecution on the merits. This election is made with traverse.

In the Restriction, the PTO alleges that Groups I and II are related as subcombinations, Groups I and III are related as subcombination and combination, and Groups II and III are related as subcombination and combination. The PTO validates the restriction based on a burden of search due to different search queries that would result from the instant claim language construction and potential claim language construction for each distinct invention. See Office Action, pg. 6.

Applicants submit that the restriction requirement is in error. It is believed that in examining the non-elected claims, the Examiner will search the same classes of art as is required to search the invention of the elected claims, resulting in the same references being cited against both of the aforementioned groups of claims.

For example, with respect to the relationship between Groups I and III, the PTO alleges that the combination does not require the particulars of the subcombination, such as displaying ready-to-receive destinations in a different from that that of non-ready-to-receive destinations. The subcombination allegedly has separate utility such as being used with a receiving apparatus that does not transmit ready status information upon a change in ready status. Applicant disagrees as the subject matter recited in claim 1 (Group I) is embodied in its entirety in claim 12 (Group III). Thus, searching the features of claim 12 would necessarily encompass searching the features of claim 1. The alleged distinctive features between the combination/subcombination appear to be defined in the dependent claims (i.e., claims 3-9). As a result of the current amendment, Applicant respectfully submits that the rationale of combination/subcombination distinction is rendered moot.

Regarding the relationship between Groups II and III, the PTO alleges that the combination does not require the particulars of the subcombination, such as sending ready status information at periodic intervals. The subcombination allegedly has separate utility such as being used with a sending apparatus that does not limit selection of destinations based on ready status information. As with the Groups I and III distinctions, Applicants respectfully submit that the subject matter recited in claim 10 (Group II) is embodied in its entirety in claim 12 (Group III). Consequently, searching the features of claim 12 would necessarily encompass searching the

features of claim 10. The alleged distinctive features between the combination/subcombination appear to be defined in dependent claim 11. As a result of the current amendment, Applicant respectfully submits that the rationale supporting the combination/subcombination distinction is moot.

Based on the above, this restriction will not reduce the workload of the U.S. Patent and Trademark Office or simplify prosecution of the application. As set forth in M.P.E.P. § 803, there are two criteria for a proper restriction requirement between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. This portion of the M.P.E.P. requires that if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. The lack of a serious burden on the Examiner is further evident in the Examiner's admission that each of Groups I, II, and III is classifiable in the same class/subclass (709/206). See Id., pg. 2.

Accordingly, reconsideration and withdrawal of the aforementioned restriction requirement is respectfully requested. The provisional restriction is hereby made without prejudice to Applicants' right to file a divisional application or applications should the restriction and election requirements become final.

Should any questions arise regarding this reply, or the application in general, Applicants' undersigned representative can be reached at the telephone number given below.

Respectfully submitted,

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